

Claims 1-3,5,9,13 and 14 are rejected under 35USC112, 2nd paragraph as being indefinite.

The somewhat narrative nature of claim 1, as well as the alternative nature of the claim, causes Claim 1 to be indefinite as to what point, in time, the combination container, alcoholic beverage and closure system is being claimed. That is, the container is recited as having three "states" and the closure system is recited as having two "states", but the combination can have only one container state and one closure state at the same time. The other states should be referred to in future tense such as "being capable of" or in the past tense, such as "having been".

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3,5,9,13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Product Alert as further evidenced by Restaurant Business.

Product Alert discloses the combination of a storage container, an alcoholic beverage and a closure system that has the various states and capabilities recited in claims 1-3, 5,9,13 and 14. Product Alert even teaches applicant's problem and solution of being able to take an unfinished bottle of wine home from a restaurant by enclosing the unfinished bottle of wine in a bag which is then sealed so that the sealed bag is evidence that the bottle has not been accessed after leaving the restaurant. Although Product Alert does not specifically mention that the bottle that is placed in the bag for

Art Unit: 1794

sealing has its closure, in the form of a cork or cap, replaced on the bottle, the “Winevelope” arrangement would inherently would have to have the opening reclosed by the cork or cap (whichever the manufacturer employed), since the beverage would otherwise spill out into the bag. In any case, Restaurant Business is applied as evidence that the combination disclosed in Product Alert did indeed have a cork and the combination of the beverage containing container and the closure system included a cork to close the opening of the container and help impart the three states of container and two states of closure system recited. It is also noted that all alcoholic beverage containers come with a cork or a cap, (the former also being readable on a cap in that it is a closure, which is one of the definitions of a cap). It is also noted that the cork having been removed, and added back, would indicate an unsealed state, let alone the container which is less than full.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3,5,9,13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Product Alert as further evidenced by Restaurant Business, further in view of Large ('981), Replogle et al ('152), Waters ('513), Morimoto ('452), Price (2,666,542), Fields (2,888,159), and Samburg (2,201,205).

In the event that one did not construe Product Alert to anticipate the claims, Large ('981), Replogle et al ('152), Waters ('513), Morimoto ('452), Price, Fields, and

Art Unit: 1794

Samburg all disclose that it was, of course, notoriously conventional to provide bottles with hole closures, such as caps and corks, and tamper evident closure systems, and to therefore modify Product Alert, who teaches applicant's problem and solution, by adding the closure element, for its art recognized and applicant's intended function would therefore have been obvious.

All of applicant's remarks filed 4/16/08 have been fully and carefully considered but are moot in view of the new ground of rejection. Contrary to what has been urged, and as clearly evidenced by Product Alert and Restaurant Business, applicant is not the first to provide a combination assembly as recited, which gives a beverage container the capability to change to the different recited states, to evidence that access has not been gained to the alcoholic beverage in the container, after it is sealed in the closure system (e.g., at a restaurant), so that a customer can take an unfinished bottle home from the restaurant.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1794

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/Steve Weinstein/
Primary Examiner, Art Unit 1794